

CAROL A. SOBEL, SBN 84483
MONIQUE A. ALARCON, SBN 311650
LAW OFFICE OF CAROL SOBEL
725 Arizona Avenue, Suite 300
Santa Monica, CA 90401
(t) 310-393-3055
(e) carolsobel@aol.com
(e) monique.alarcon8@gmail.com

PAUL HOFFMAN, SBN 71244
CATHERINE SWEETSER, SBN 271142
SCHONBRUN SEPLOW HARRIS & HOFFMAN LLP
11543 W. Olympic Boulevard
Los Angeles, CA 90064
(t) 310-396-0731
(f) 310-399-7040
(e) hoffpaul@aol.com
(e) csweetser@sshlaw.com

Attorneys for Plaintiff,
DARREN "PETE" WHITE.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DARREN "PETE" WHITE,

Plaintiff,

v.

CITY OF LOS ANGELES, ET AL.,

Defendants.

Case No.: 2:17-cv-3306-SJO-MRW

**[PROPOSED] PRE-TRIAL
CONFERENCE ORDER**¹

PTC:
Date: August 13, 2018
Time: 9:00 a.m.
Dept.: 10C (Hon. S. James Otero)

TRIAL:
Date: August 21, 2018
Time: 9:00 a.m.
Dept.: 10C (Hon. S. James Otero)

¹ Plaintiff did not have the opportunity to meet and confer with Defendants' counsel about this order nor did Plaintiff receive Defendants' portions due to Defendants' counsel's illness. Plaintiff hereby submits his portions of the Pretrial Conference Order, but reserves the right to amend these portions when Defendants' portions are received.

TABLE OF CONTENTS

1		
2		
3	1. THE PARTIES	1
4	2. FEDERAL JURISDICTION AND VENUE	1
5	3. TRIAL TIME.....	1
6	4. JURY TRIAL	1
7	5. ADMITTED FACTS.....	1
8	6. STIPULATED FACTS	2
9	7. CLAIMS AND DEFENSES OF THE PARTIES	2
10	(a) Plaintiff plans to pursue the following claims against the following	
11	defendants:.....	2
12	(b) The elements required to establish Plaintiff’s claims are:	3
13	(c) The key evidence to establish each claim is as follows:.....	6
14	8. ULTIMATE ISSUES	8
15	9. DISCOVERY	9
16	10. DISCLOSURES AND EXHIBIT LIST.....	9
17	11. WITNESS LIST	9
18	12. LAW AND MOTION MATTERS AND MOTIONS IN LIMINE.....	10
19	13. BIFURCATION OF ISSUES FOR TRIAL.....	10
20	14. WEIGHT OF PRE-TRIAL CONFERENCE STATEMENT	11
21		
22		
23		
24		
25		
26		
27		
28		

1 **1. THE PARTIES**

2 Plaintiff Darren White brings this action against Defendants Edward Kinney and
3 the City of Los Angeles. Each of these parties has been served and appeared.
4 Parties not named here (Charlie Beck, in his official capacity) are hereby dismissed.
5

6 The pleadings which raise the issues are the First Amended Complaint (Docket
7 20) and the Answer (Docket 29). Plaintiffs have abandoned claims against
8 Defendant Beck but maintain all other claims against both Defendants. The only
9 exception is that although the City of Los Angeles is liable for violations of the First
10 Amendment under Monell, Plaintiff does not pursue his retaliation theory against
11 the City of Los Angeles.
12

13 **2. FEDERAL JURISDICTION AND VENUE**

14 Federal jurisdiction and venue are invoked on the grounds that the case raises
15 federal questions under 28 U.S.C. §1331.
16

17 **3. TRIAL TIME**

18 The parties have agreed to bifurcate the punitive damages issue. Trial on the
19 initial claims against Defendant Kinney and the City of Los Angeles is estimated to
20 take three days.
21

22 **4. JURY TRIAL**

23 The trial is to be a jury trial.
24

25 **5. ADMITTED FACTS**

26 Plaintiff proposes the following admitted facts:

27 1. San Julian and Sixth Street is an intersection in the Skid Row section of Los
28 Angeles.

1 2. Wall Street is to the west of San Julian Street.

2 3. On June 14, 2016, an arrest of a third party took place between San Julian
3 Street and Wall Street on Sixth Street.

4 4. On June 14, 2016, Plaintiff Darren White was seized and arrested.

5 5. Defendant Edward Kinney was acting under color of state law on June 14,
6 2016.

7
8 **6. STIPULATED FACTS**

9 The following facts, though stipulated, shall be without prejudice to any
10 evidentiary objection: None.

11
12 **7. CLAIMS AND DEFENSES OF THE PARTIES**

13 **Plaintiffs:**

14 **(a) Plaintiff plans to pursue the following claims against the following**
15 **defendants:**

16 Claim 1: Violation of the First Amendment and California Constitution
17 Art. 1, §2, against Defendants Kinney and City of Los Angeles

18 Claim 2: Retaliation in Violation of the First Amendment and California
19 Constitution Art. 1, §2, against Defendant Kinney only

20 Claim 3: Unlawful Seizure in Violation of the Fourth Amendment, against
21 Defendant Kinney and Defendant City of Los Angeles.

22 Claim 4: Unlawful Seizure in Violation of the Fourteenth Amendment,
23 against Defendant Kinney and Defendant City of Los Angeles.

24 Claim 5: Violation of California Civil Code §52.1, against Defendant
25 Kinney and Defendant City of Los Angeles

26 Claim 6: False Imprisonment, against Defendant Kinney and Defendant
27 City of Los Angeles.
28

1 Claim 7: False Arrest Without a Warrant by Police Officer, against
2 Defendant Kinney and Defendant City of Los Angeles.
3

4 **(b)The elements required to establish Plaintiff's claims are:**

5 **Claim 1: Violation of the First Amendment and California**
6 **Constitution Art. 1 §2**

7 The elements of the claim against Defendant Kinney are:

- 8 1. The Plaintiff engaged in protected conduct under the First
9 Amendment
- 10 2. Defendant Kinney took action against the plaintiff
- 11 3. Stopping the Plaintiff's protected conduct was a substantial or
12 motivating factor for Defendant Kinney's action.

13 The further elements of the claim against Defendant City of Los
14 Angeles are:

- 15 4. Defendant City of Los Angeles had a custom, policy or practice of
16 failing to train its officers about protected conduct.
17

18
19 **Claim 2: Retaliation in Violation of the First Amendment and**
20 **California Constitution Art. 1, §2, against Defendant Kinney only**
21

22 The elements of the claim are:

- 23 1. The Plaintiff and his organization engaged in protected conduct
24 under the First Amendment
- 25 2. Defendant Kinney took action against the Plaintiff
- 26 3. Retaliating against the Plaintiff for Plaintiff's and his organization's
27 protected conduct was a substantial or motivating factor for the
28 defendant's action.

**Claim 3: Unlawful Seizure in Violation of the Fourth Amendment,
against Defendant Kinney and Defendant City of Los Angeles.**

The elements of the claim are:

1. Defendant Kinney seized the plaintiff's person;
2. In seizing the Plaintiff's person, Defendant Kinney acted intentionally;
3. The seizure was unreasonable.

The further elements of the claim against Defendant City of Los Angeles are:

4. Defendant City of Los Angeles had a custom, policy or practice of failing to train its officers as to when probable cause was created for a violation of Penal Code §148; in fact, there is a custom and policy of using that code section indiscriminately and arbitrarily.

**Claim 4: Unlawful Seizure in Violation of the Fourteenth Amendment,
against Defendant Kinney and Defendant City of Los Angeles.**

The elements of the claim are:

1. Defendant Kinney seized the Plaintiff's person;
2. Defendant Kinney's seizure of Plaintiff's person was contrary to state law.

The further element against the City of Los Angeles is as follows:

3. Defendant City of Los Angeles' custom, policy, and/or practice of arresting and holding persons charged with minor misdemeanors caused Mr. White to be held in violation of state law.

Claim 5: Violation of California Civil Code §52.1, against Defendant Kinney and Defendant City of Los Angeles

The elements of the claim are:

1. Defendants used threats, intimidation, or coercion to interfere or in an attempt to interfere with the Plaintiff's exercise or enjoyment of rights secured by the laws of California;
2. The interference caused Plaintiff to suffer injury, damage, loss, or harm

Claim 6: False Imprisonment, against Defendant Kinney and Defendant City of Los Angeles

The elements of the claim are:

1. Defendant Kinney and the City of Los Angeles held the plaintiff in custody
2. Plaintiff should not have been held in custody at all, or there was an unnecessary delay in releasing the plaintiff
3. Plaintiff did not consent to be held or to the delay
4. Plaintiff was harmed.

Claim 7: Arrest Without a Warrant by Police Officer, against Defendant Kinney and Defendant City of Los Angeles

The elements of the claim are:

1. Defendant Kinney arrested Plaintiff White without a warrant and without probable cause
2. Plaintiff White was actually harmed
3. Defendant Kinney's conduct was a substantial factor in causing Plaintiff's harm.

1 **(c) The key evidence to establish each claim is as follows:**

2 **Claim 1:** 1. The Plaintiff engaged in protected conduct under the First
3 Amendment: Video exhibits and testimony of plaintiff and Defendant Kinney and of
4 Mr. Steve Diaz.

5 2. Defendant Kinney took action against the plaintiff: Video exhibits.

6 3. Stopping the Plaintiff's protected conduct was a substantial or
7 motivating factor for Defendant Kinney's action. Video exhibits and photographic
8 stills, testimony of plaintiff, of Defendant Kinney, of Mr. Steve Diaz, and of
9 Commander Leslie, and booking documents and notice to appear.

10 The further elements of the claim against Defendant City of Los Angeles are:

11 4. Defendant City of Los Angeles had a custom, policy or practice of
12 failing to train its officers about protected conduct.

13
14 **Claim 2:** 1. The Plaintiff engaged in protected conduct under the First
15 Amendment: Video exhibits and testimony of plaintiff and Defendant Kinney and of
16 Mr. Steve Diaz.

17 2. Defendant Kinney took action against the plaintiff: Video exhibits.

18 3. Retaliating against the Plaintiff's protected conduct was a substantial or
19 motivating factor for Defendant Kinney's action. Video exhibits and photographic
20 stills, testimony of plaintiff, of Defendant Kinney, of Mr. Steve Diaz, and of
21 Commander Leslie, and booking documents and notice to appear.

22
23 **Claim 3:** The elements of the claim are:

24 1. Defendant Kinney seized the plaintiff's person: Video exhibits and
25 testimony of plaintiff and Defendant Kinney.

26 2. In seizing the Plaintiff's person, Defendant Kinney acted intentionally:
27 Video exhibits and testimony of plaintiff and Defendant Kinney.

1 3. The seizure was unreasonable: Video exhibits, testimony of plaintiff, of
2 Defendant Kinney, of Mr. Steve Diaz, and of Commander Leslie, and booking
3 documents and notice to appear.

4 The further elements of the claim against Defendant City of Los Angeles are:

5 4. Defendant City of Los Angeles had a custom, policy or practice:
6 testimony of Defendant Kinney and of Commander Leslie; adult detention log.

7
8 **Claim 4:** 1. Defendant Kinney seized the Plaintiff's person: Video exhibits
9 and testimony of plaintiff and Defendant Kinney.

10 2. Defendant Kinney's seizure was contrary to state law: Testimony of
11 plaintiff, of Defendant Kinney, booking documents and notice to appear.

12 3. Defendant City of Los Angeles had a custom, policy or practice:
13 testimony of Defendant Kinney and of Commander Leslie; adult detention log.

14
15 **Claim 5:** 1. Defendant Kinney and the City of Los Angeles interfered with
16 Plaintiff's constitutional rights: Video exhibits, testimony of plaintiff, of Defendant
17 Kinney, of Mr. Steve Diaz, and of Commander Leslie, and booking documents and
18 notice to appear.

19 2. Plaintiff was harmed: Video exhibits, testimony of plaintiff, of Defendant
20 Kinney, of Mr. Steve Diaz, and of Commander Leslie.

21
22 **Claim 6:** 1. Defendant Kinney and the City of Los Angeles held the Plaintiff
23 in custody: Video exhibits, testimony of plaintiff, of Defendant Kinney, of Mr.
24 Steve Diaz, and of Commander Leslie, and booking documents and notice to appear.

25 2. Plaintiff should not have been held in custody and did not consent: Video
26 exhibits, testimony of plaintiff, of Defendant Kinney, of Mr. Steve Diaz, and of
27 Commander Leslie, and booking documents and notice to appear.

1 **Claim 7:** 1. Defendant Kinney arrested Plaintiff White without a warrant or
2 probable cause: Video exhibits, testimony of plaintiff, of Defendant Kinney, of Mr.
3 Steve Diaz, and of Commander Leslie, and booking documents and notice to appear.

4 2. Plaintiff White was actually harmed: testimony of Plaintiff and of Mr.
5 Steve Diaz.

6 3. Defendant Kinney's conduct was a substantial factor in causing
7 Plaintiff's harm: Video exhibits, testimony of plaintiff, of Defendant Kinney, of Mr.
8 Steve Diaz, and of Commander Leslie, and booking documents and notice to appear.
9
10

11 **Defendants' Evidence in Opposition to the Claims:**

12
13 **Claim 1**

14
15 **Claim 2:**

16
17 **Claim 3:**

18
19 **Claim 4**

20
21 **Claim 5:**

22
23 **Defendant's Affirmative Defenses:**

24
25 **8. ULTIMATE ISSUES**

26
27 A. Plaintiffs' Issues: The ultimate issues that remain to be tried are: Whether
28 Defendant Kinney violated Plaintiff's rights under the First, Fourth, and

1 Fourteenth Amendments and the corresponding state constitutional
2 provisions; whether Defendant Kinney violated the Bane Act in depriving
3 plaintiff of his constitutional rights; whether Defendant Kinney falsely
4 imprisoned Plaintiff; and whether Defendant Kinney arrested Plaintiff without
5 a warrant. There is also an ultimate issue of whether the City of Los Angeles
6 is also responsible for the federal violations because of its custom, policy, or
7 practice. There is no dispute that the City is vicariously liable under state law
8 for the state law violations. Plaintiff's damages from these violations also
9 remain to be tried, including punitive damages against Defendant Kinney.
10

11 B. Defendant's Issues
12

13 **9. DISCOVERY**

14 Discovery is complete.
15

16 **10. EXHIBIT LIST**

17 The exhibit list has been filed. The parties are filing an exhibit stipulation
18 concurrently with this Pretrial Conference Order pursuant to the court's standing
19 order.
20

21 **11. WITNESS LIST**

22 The witness list has been filed. Only those witnesses identified therein will
23 be allowed to testify at trial. The parties do not intend to present any deposition
24 testimony in lieu of witness testimony, and will use deposition testimony for
25 impeachment only.
26

27 //

28 //

1 **12. LAW AND MOTION MATTERS AND MOTIONS IN LIMINE**

2 **Plaintiffs**

3 Plaintiffs have filed four motions in limine, including:

- 4 1. A motion to exclude evidence and testimony concerning past arrests and
- 5 convictions for any witnesses including Plaintiff.
- 6 2. A motion to exclude evidence and testimony concerning past lawsuits
- 7 brought by Plaintiff and his organization.
- 8 3. A motion to exclude the body-cam videos that Defendants have refused to
- 9 produce to Plaintiff from trial, even for impeachment purposes.
- 10 4. A motion to exclude evidence and testimony concerning any cursing by
- 11 Plaintiff after his arrest.

12
13 **13. BIFURCATION OF ISSUES FOR TRIAL**

14 **Plaintiff's position:** Plaintiff has agreed that punitive damages can be bifurcated
15 for trial.

16 **Defendant's position:**

17
18
19
20
21
22
23
24
25
26
27 //

28 //

1 **14. WEIGHT OF PRE-TRIAL CONFERENCE STATEMENT**

2 The foregoing admissions having been made by the parties, and the parties
3 having specified the foregoing issues remaining to be litigated, this Final Pretrial
4 Conference Order shall supersede the pleadings and govern the course of the trial of
5 this cause, unless modified to prevent manifest injustice.

6 Dated: August 6, 2018

7 Respectfully submitted,
8 LAW OFFICE OF CAROL A. SOBEL
9 SCHONBRUN SEPLOW HARRIS &
HOFFMAN LLP

10 By: /s/ Catherine Sweetser

11 CATHERINE E. SWEETSER
12 Attorney for Plaintiff
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28